

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 901**

Introduced by Wightman, 36; Conrad, 46; Flood, 19.

Read first time January 12, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to child custody; to amend section 43-2923,  
2 Reissue Revised Statutes of Nebraska, and section  
3 42-364, Revised Statutes Supplement, 2009; to change  
4 best interests of the child requirements; to provide for  
5 waiver of mandatory mediation as prescribed; to provide  
6 an operative date; to repeal the original sections; and  
7 to declare an emergency.  
8 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 42-364, Revised Statutes Supplement,  
2 2009, is amended to read:

3           42-364 (1) In an action under Chapter 42 involving  
4 child support, child custody, parenting time, visitation, or other  
5 access, the parties and their counsel, if represented, shall  
6 develop a parenting plan as provided in the Parenting Act. If  
7 the parties and counsel do not develop a parenting plan, the  
8 complaint shall so indicate as provided in section 42-353 and  
9 before July 1, 2010, the case may be referred to mediation,  
10 specialized alternative dispute resolution, or other alternative  
11 dispute resolution process and on or after such date the case  
12 shall be referred to mediation or specialized alternative dispute  
13 resolution as provided in the Parenting Act. For good cause shown  
14 and when both parents agree and such parental agreement is bona  
15 fide and not asserted to avoid the purposes of the Parenting Act,  
16 or when mediation or specialized alternative dispute resolution is  
17 not possible without undue delay or hardship to either parent, the  
18 mediation or specialized alternative dispute resolution requirement  
19 may be waived by the court. In such a case where waiver of the  
20 mediation or specialized alternative dispute resolution is sought,  
21 the court shall hold an evidentiary hearing and the burden of proof  
22 for the party or parties seeking waiver is by clear and convincing  
23 evidence. The decree in an action involving the custody of a minor  
24 child shall include the determination of legal custody and physical  
25 custody based upon the best interests of the child, as defined

1 in the Parenting Act, and child support. Such determinations shall  
2 be made by incorporation into the decree of (a) a parenting plan  
3 developed by the parties, if approved by the court, or (b) a  
4 parenting plan developed by the court based upon evidence produced  
5 after a hearing in open court if no parenting plan is developed by  
6 the parties or the plan developed by the parties is not approved  
7 by the court. The decree shall conform to the Parenting Act. The  
8 social security number of each parent and the minor child shall  
9 be furnished to the clerk of the district court but shall not be  
10 disclosed or considered a public record.

11 (2) In determining legal custody or physical custody,  
12 the court shall not give preference to either parent based on the  
13 sex of the parent and, except as provided in section 43-2933, no  
14 presumption shall exist that either parent is more fit or suitable  
15 than the other. Custody shall be determined on the basis of the  
16 best interests of the child, as defined in the Parenting Act.  
17 Unless parental rights are terminated, both parents shall continue  
18 to have the rights stated in section 42-381.

19 (3) Custody of a minor child may be placed with both  
20 parents on a joint legal custody or joint physical custody basis,  
21 or both, (a) when both parents agree to such an arrangement in the  
22 parenting plan and the court determines that such an arrangement is  
23 in the best interests of the child or (b) if the court specifically  
24 finds, after a hearing in open court, that joint physical custody  
25 or joint legal custody, or both, is in the best interests of the

1 minor child regardless of any parental agreement or consent.

2 (4) In determining the amount of child support to be  
3 paid by a parent, the court shall consider the earning capacity  
4 of each parent and the guidelines provided by the Supreme Court  
5 pursuant to section 42-364.16 for the establishment of child  
6 support obligations. Upon application, hearing, and presentation of  
7 evidence of an abusive disregard of the use of child support money  
8 or cash medical support paid by one party to the other, the court  
9 may require the party receiving such payment to file a verified  
10 report with the court, as often as the court requires, stating  
11 the manner in which child support money or cash medical support  
12 is used. Child support money or cash medical support paid to the  
13 party having custody of the minor child shall be the property of  
14 such party except as provided in section 43-512.07. The clerk of  
15 the district court shall maintain a record, separate from all other  
16 judgment dockets, of all decrees and orders in which the payment  
17 of child support, cash medical support, or spousal support has  
18 been ordered, whether ordered by a district court, county court,  
19 separate juvenile court, or county court sitting as a juvenile  
20 court. Orders for child support or cash medical support in cases  
21 in which a party has applied for services under Title IV-D of  
22 the federal Social Security Act, as amended, shall be reviewed as  
23 provided in sections 43-512.12 to 43-512.18.

24 (5) Whenever termination of parental rights is placed in  
25 issue:

1           (a) The court shall transfer jurisdiction to a juvenile  
2 court established pursuant to the Nebraska Juvenile Code unless  
3 a showing is made that the county court or district court  
4 is a more appropriate forum. In making such determination, the  
5 court may consider such factors as cost to the parties, undue  
6 delay, congestion of dockets, and relative resources available for  
7 investigative and supervisory assistance. A determination that the  
8 county court or district court is a more appropriate forum shall  
9 not be a final order for the purpose of enabling an appeal. If  
10 no such transfer is made, the court shall appoint an attorney as  
11 guardian ad litem to protect the interests of any minor child.  
12 The court may terminate the parental rights of one or both parents  
13 after notice and hearing when the court finds such action to be in  
14 the best interests of the minor child, as defined in the Parenting  
15 Act, and it appears by the evidence that one or more of the grounds  
16 for termination of parental rights stated in section 43-292 exist;  
17 and

18           (b) The court shall inform a parent who does not have  
19 legal counsel of the parent's right to retain counsel and of  
20 the parent's right to retain legal counsel at county expense if  
21 such parent is unable to afford legal counsel. If such parent  
22 is unable to afford legal counsel and requests the court to  
23 appoint legal counsel, the court shall immediately appoint an  
24 attorney to represent the parent in the termination proceedings.  
25 The court shall order the county to pay the attorney's fees and

1 all reasonable expenses incurred by the attorney in protecting the  
2 rights of the parent. At such hearing, the guardian ad litem shall  
3 take all action necessary to protect the interests of the minor  
4 child. The court shall fix the fees and expenses of the guardian ad  
5 litem and tax the same as costs but may order the county to pay on  
6 finding the responsible party indigent and unable to pay.

7 (6) Modification proceedings relating to support,  
8 custody, parenting time, visitation, other access, or removal of  
9 children from the jurisdiction of the court shall be commenced  
10 by filing a complaint to modify. Modification of a parenting  
11 plan is governed by the Parenting Act. Proceedings to modify a  
12 parenting plan shall be commenced by filing a complaint to modify.  
13 Such actions may be referred to mediation, specialized alternative  
14 dispute resolution, or other alternative dispute resolution process  
15 before July 1, 2010, and on and after such date shall be referred  
16 to mediation or specialized alternative dispute resolution as  
17 provided in the Parenting Act. Service of process and other  
18 procedure shall comply with the requirements for a dissolution  
19 action.

20 (7) In any proceeding under this section relating to  
21 custody of a child of school age, certified copies of school  
22 records relating to attendance and academic progress of such child  
23 are admissible in evidence.

24 Sec. 2. Section 43-2923, Reissue Revised Statutes of  
25 Nebraska, is amended to read:

1                   43-2923 The best interests of the child require:

2                   (1) A parenting arrangement and parenting plan or other  
3 court-ordered arrangement which provides for a child's safety,  
4 emotional growth, health, stability, and physical care and regular  
5 and continuous school attendance and progress for school-age  
6 children;

7                   (2) When a preponderance of the evidence indicates  
8 domestic intimate partner abuse, a parenting and visitation  
9 arrangement that provides for the safety of a victim parent;

10                  (3) That the child's families and those serving in  
11 parenting roles remain appropriately active and involved in  
12 parenting with safe, appropriate, continuing quality contact  
13 between children and their families when they have shown the  
14 ability to act in the best interests of the child and have shared  
15 in the responsibilities of raising the child;

16                  (4) That even when parents have voluntarily negotiated  
17 or mutually mediated and agreed upon a parenting plan, the court  
18 shall determine whether it is in the best interests of the child  
19 for parents to maintain continued communications with each other  
20 and to make joint decisions in performing parenting functions as  
21 are necessary for the care and healthy development of the child. If  
22 the court rejects a parenting plan, the court shall provide written  
23 findings as to why the parenting plan is not in the best interests  
24 of the child; and

25                  (5) That certain principles provide a basis upon which

1 education of parents is delivered and upon which negotiation and  
2 mediation of parenting plans are conducted. Such principles shall  
3 include: To minimize the potentially negative impact of parental  
4 conflict on children; to provide parents the tools they need to  
5 reach parenting decisions that are in the best interests of a  
6 child; to provide alternative dispute resolution or specialized  
7 alternative dispute resolution options that are less adversarial  
8 for the child and the family; to ensure that the child's voice  
9 is heard and considered in parenting decisions; to maximize the  
10 safety of family members through the justice process; and, in  
11 cases of domestic intimate partner abuse or child abuse or neglect,  
12 to incorporate the principles of victim safety and sensitivity,  
13 offender accountability, and community safety in parenting plan  
14 decisions; and-

15 (6) In determining custody and parenting arrangements,  
16 the court shall consider the best interests of the minor,  
17 which shall include, but not be limited to, consideration of  
18 the foregoing factors and:

19 (a) The relationship of the minor child to each parent  
20 prior to the commencement of the action or any subsequent hearing;

21 (b) The desires and wishes of the minor child, if of an  
22 age of comprehension but regardless of chronological age, when such  
23 desires and wishes are based on sound reasoning;

24 (c) The general health, welfare, and social behavior of  
25 the minor child; and

1           (d) Credible evidence of abuse inflicted on any family  
2 or household member. For purposes of this subdivision, abuse and  
3 family or household member shall have the meanings prescribed in  
4 section 42-903.

5           Sec. 3. This act becomes operative on July 1, 2010.

6           Sec. 4. Original section 43-2923, Reissue Revised  
7 Statutes of Nebraska, and section 42-364, Revised Statutes  
8 Supplement, 2009, are repealed.

9           Sec. 5. Since an emergency exists, this act takes effect  
10 when passed and approved according to law.